

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALLEN JONES,

Petitioner,

-v-

EARL BELL, Superintendent,  
Clinton Correctional Facility,

Respondent.  
-----X

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED

DOC #:

DATE FILED: 2/3/2022

: 20-CV-1951 (CM) (RWL)

: NOTICE OF MOTION FOR  
RECONSIDERATION

PLEASE TAKE NOTICE, that upon the annexed affirmation of DAVID KLEM, the annexed memorandum of law, and the prior proceedings herein, the undersigned will move this Court, at the U.S. Courthouse, 500 Pearl Street, New York, New York 10007, as soon as counsel can be heard, for an order, pursuant to Fed. R. Civ. P. 59(e) and 60(b)(6), and Local Civil Rule 6.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, granting reconsideration of petitioner's habeas corpus petition and, on reconsideration, either granting a Certificate of Appealability on petitioner's Brady and/or Confrontation Clause claims or striking the final sentence of this Court's January 26, 2022, memo endorsement denying the petition, and for such other relief as the Court deems just and appropriate.

Dated: New York, New York  
February 3, 2022

Respectfully submitted,

DAVID KLEM (DK-5665), Of Counsel  
ROBERT S. DEAN (RD-0772)  
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MEMO ENDORSED

2/3/2022

The motion for reconsideration is DENIED. If I should let the petitioner let come close to making a "substantial showing" that his constitutional rights were violated I would have issued a COA. I did not believe that he had and nothing new is introduced. The observation that the Magistrate Judge made a recommendation that a COA not issue is beside the point - in 23 years on this job I cannot recall a single instance in which a Magistrate Judge made a recommendation one way or the other on this issue. The Brady claim is, in my opinion and for the reasons articulated by Judge Leuburger, insubstantial. The



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concerning the cooperation agreement

(see RTR,  
§ 31)

Confrontation Clause argument addressed to restrictions on cross examination might present a ~~few~~ closer question but for the stipulation between the people and defense Counsel, which placed before the jury the evidence that cross examination would have revealed. And while I am content to rest on MS Lehtenberg's reasoning, in my opinion counsel's acceptance of the stipulation - over their protest - operated as waiver of the defendant's confrontation rights concerning Jones' possible motive to lie. The matter not encompassed by the stipulation - all prior bad acts - were collateral and as the learned judge observed, had never been the subject of any criminal charges. It could have been bargained away in exchange for Jones' testimony.

I will strike the final sentence from my minute order adopting the Report as my opinion so that the appeal can be filed and a Cost sought in forma pauperis.

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